



August 13, 2014

VIA ELECTRONIC FILING

Marlene H. Dortch Secretary Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554

Re: In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations,
MB Docket No. 14-57

Dear Ms. Dortch:

On August 11, 2014, David L. Cohen, Executive Vice President of Comcast Corporation ("Comcast"), and the undersigned met with Jim Bird, Hillary Burchuk, Hillary DeNigro, William Dever, Lisa Gelb, Jonathan Sallet, and Philip Verveer to discuss Comcast's transaction with Time Warner Cable Inc. ("TWC") and the Divestiture Transactions with Charter Communications, Inc. ("Charter") and SpinCo (collectively, the "Transactions"). As a preliminary matter, we provided an overview of the status of the transaction review and approval processes at the Department of Justice and the state and local levels. We also emphasized that, while some commenting parties will likely raise concerns regarding industry consolidation generally, the Commission's review of license-transfer proceedings should focus on *transaction-specific* issues and on protecting competition, not competitors. We reiterated the many compelling pro-consumer and pro-competitive public interest benefits of the Transactions as explained in the parties' public interest showings, and explained why certain categories of criticisms that have been lodged thus far against the Transactions – specifically, those related to (i) broadband, (ii) video programming, (iii) advertising, and (iv) diversity – lack merit.

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See Commission Seeks Comment on Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign And Transfer Control of FCC Licenses and Other Authorizations, Public Notice, MB Docket No. 14-57, DA 14-986 (July 10, 2014).

Application and Public Interest Statement of Comcast Corp. and Time Warner Cable Inc., MB Docket No. 14-57 (Apr. 8, 2014) ("Comcast-TWC Public Interest Statement"); Public Interest Statement of Comcast Corporation and Charter Communications Inc., Charter-to-Comcast Exchange Transaction, MB Docket No. 14-57 (June 4, 2014); Public Interest Statement of Charter Communications, Inc. and Comcast Corporation, Comcast-to-Charter Exchange and Sale Transactions, MB Docket No. 14-57 (June 4, 2014); Public Interest Statement of SpinCo, Charter Communications, Inc., and Comcast Corporation, Spin Transaction, MB Docket No. 14-57 (June 4, 2014).

Broadband. We emphasized that claims that the Transactions will harm broadband competition, and that the combined company will have a 50 percent or greater share of the national broadband market are incorrect and based on faulty assumptions or wrong facts. We explained that the most up-to-date data (based on the Commission's recently released latest Internet Access Services Report as of June 2013 and the parties' corresponding Form 477 data) show the combined company having a 35.5 percent share of the narrow fixed-only universe of broadband connections following the Transactions, and a 15.5 percent share when mobile broadband connections are included – a non-trivial decrease from just six months before, which reflects the robust competitive nature of the marketplace.³

Regardless, however, we indicated that the focus on national broadband share is misguided. The combined company's static share of the national universe of broadband subscribers is irrelevant to whether the combined company could act as a bottleneck or harm edge providers, because broadband competition depends on the choices available to each household at the *local* level.⁴ Comcast and TWC serve almost entirely distinct geographic areas and do not compete in any relevant market for Internet access services.⁵ Therefore, the transaction will change nothing about competition for such services and the number of broadband choices available to consumers.

Indeed, the broadband marketplace is competitive and dynamic, and consumers enjoy ample and growing choices of broadband providers, particularly as telcos continue to make investments in fiber and advanced DSL services, and wireless broadband increasingly becomes a more robust competitive alternative to wireline service in the near-future. We discussed with Commission staff the factors that will contribute to the already staggering growth of wireless broadband, and explained that, while today wireless is certainly at least a partial substitute for many consumers (and a full substitute for some), any current constraints on wireless broadband as a complete substitute for wireline service are primarily a function of cost, not technological capabilities. Other companies, including Comcast's competitors, recognize the potential and marketplace opportunity for wireless broadband. And, as detailed in parties' filings, the Transactions will yield a number of broadband-

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See Letter from Kathryn A. Zachem, Comcast, et al., to Marlene H. Dortch, FCC, MB Docket 14-57, at 5 & n.10 (June 27, 2014) ("June 27th Letter") (calculations include the reduction of 3.9 million subscribers following the Divestiture Transactions with Charter). Prior to the release of the Internet Access Services Report as of June 2013, Dr. Israel calculated Comcast's post-transaction share of national broadband subscribers as 39.5 percent of fixed-only connections and as 19.9 percent of fixed and mobile connections combined based on December 2012 data (assuming planned divestitures of 3 million customers). See Comcast-TWC Public Interest Statement at 158; id., Exhibit 6, ¶ 42 & Table 1 ("Israel Decl."); see also June 27th Letter at 5.

See Comcast-TWC Public Interest Statement at 158; Israel Decl. ¶¶ 20-23, 42. Although national share could hypothetically have some relevance to the Internet interconnection market, we explained that the market for peering and transit is intensely competitive. Given the proliferation of transit options, transit prices have dropped by over 99 percent since 1998 on a cost per Mbps basis, which in turn has forced down the price of direct peering as well. See Comcast-TWC Public Interest Statement at 161 & n.429.

⁵ See id. at 127 & n.307, 138.

See id. at 42-56 (describing the range of competing broadband technologies, including satellite broadband offerings); see also Israel Decl. ¶¶ 43-68 (same).

⁷ See Comcast-TWC Public Interest Statement at 56; Israel Decl. ¶ 67.

For example, AT&T plans to deploy LTE-based fixed wireless local loop services to approximately 13 million customers across 48 states at download speeds of 15-20 Mbps. Description of the Transaction, Public Interest Showing,

related public interest benefits, such as spurring increased competition from broadband providers and facilitating innovation by edge providers.⁹

<u>Video Programming</u>. In response to concerns that have been raised by various programmers and other parties, we explained that the Transactions will not pose any competitive concerns relating to the market for purchasing video programming. We again stressed that the Commission's analysis of the Transactions should be focused on transaction-specific issues, not on the claims of programmers intent on using this proceeding to secure new or different business arrangements. We noted that, following the Transactions, the combined company's share of managed residential video subscribers would be below the prior 30 percent cap under the Commission's twice-rejected horizontal ownership rules. Contrary to their claims, the Transactions are unlikely to lead to greater bargaining power for the combined company with respect to programmers. To the contrary, in today's fiercely competitive video distribution marketplace, content providers have significant bargaining leverage, as reflected by the fact that Comcast's per-subscriber programming costs have increased by over 120 percent between 2004 and 2013, significantly outpacing increases in average cable retail prices.

As for smaller, independent programmers, we highlighted Comcast's stellar record of supporting independent programming voices. Comcast carries over 160 independent networks and, since 2011, has launched four new minority-owned or managed independent networks, and has substantially expanded carriage of numerous independent networks. We described the factors that Comcast considers when evaluating carriage requests; Comcast strives to offer a wide variety of compelling content for our customers in various packages and at various price points, while also balancing financial costs, opportunity costs, consumer demand, and available bandwidth, among other considerations. As a consumer demand, and available bandwidth, among other considerations.

<u>Advertising</u>. We discussed why concerns regarding the advertising marketplace are unfounded and how the Transactions will enable the combined company to become a stronger advertising competitor. As stated, Comcast and TWC serve distinct geographic markets and do not compete for cable spot advertising.¹⁵ We also noted that both the Commission and the DOJ have found that cable spot advertising and broadcast advertising are not close substitutes and, therefore, constitute two

and Related Demonstrations, AT&T Inc. and DirecTV, MB Docket No. 14-90, at 42-44 (June 11, 2014). Masayoshi Son, Chairman and CEO of Softbank, stated that he envisions offering mobile broadband speeds of 200 Mbps. Masayoshi Son, CEO, Softbank Corp., *The Promise of Mobile Internet in Driving American Innovation, the Economy and Education*, Tr. at 12 (Mar. 11, 2014), http://webcast.softbank.co.jp/en/press/20140311/pdf/press_20140311_02.pdf.

⁹ See, e.g., Comcast-TWC Public Interest Statement at 42-56.

¹⁰ See Comcast Corp. v. FCC, 579 F.3d 1 (D.C. Cir. 2009); Time Warner Entm't Co., L.P. v. FCC, 240 F.3d 1126 (D.C. Cir. 2001).

See Comcast Corp., Annual Reports (Form 10-K), available at http://www.cmcsk.com/sec.cfm (since 2004).

Comcast-TWC Public Interest Statement at 149.

See id.

¹⁴ See id. at 73-79.

We also described Comcast Spotlight's role in selling spot cable advertising. *See* Comcast-TWC Public Interest Statement at 11.

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separate product markets. The Transactions thus pose no competitive harm to the advertising market, even in the few DMAs in which NBCUniversal currently owns and operates a broadcast station and Comcast will be acquiring cable systems. We also noted that those raising advertising-related issues about this transaction vastly overestimate cable's role in the marketplace. Based on SNL Kagan data, only seven percent of local advertising revenues go to cable. In fact, the Transactions will facilitate the development and deployment of next-generation advertising technologies, such as addressable advertising. We described the evolution of addressable advertising technology, Comcast's ongoing trials and efforts to further explore this opportunity, and briefly discussed its capabilities, including the cross-channel marketing capabilities of addressable ads.¹⁶ We also clarified that addressable advertising technology will be compatible not just with Comcast's X1 platform, but with existing digital set-top boxes in all-digital Comcast systems.

Diversity. Finally, we highlighted Comcast's commitment to diversity and its best-in-class diversity and inclusion program. This program has been enhanced over the past three years by a variety of voluntary commitments Comcast made in connection with the NBCUniversal transaction that span five key focus areas across all aspects of Comcast's business: (1) governance, (2) workforce recruitment and retention, (3) procurement, (4) programming, and (5) philanthropy and community investment. As detailed in the recently released Diversity and Inclusion Progress report, the annual Corporate Social Responsibility report, and in the Comcast-TWC Public Interest Statement, Comcast has made clear progress towards these goals, in many cases exceeding its commitments and expanding upon them with new or modified initiatives.¹⁷ Comcast is a demonstrated leader in this area and stands by its ongoing efforts and partnerships, which will extend to the acquired systems. Beyond that, however, we explained to Commission staff that we do not believe these initiatives are properly linked to the Transactions.

Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Kathryn A. Zachem

Senior Vice President, Regulatory and State Legislative Affairs Comcast Corporation

cc: Jim Bird Hillary Burchuk Hillary DeNigro William Dever Lisa Gelb Jonathan Sallet Philip Verveer

¹⁶ See id. at 103-06.

See Diversity and Inclusion Progress Report, Comcast Corp., http://corporate.comcast.com/diversityreport; 2013 Corporate Social Responsibility Report, Comcast Corp., http://corporate.comcast.com/diversityreport; 2013 http://corporate.comcast.com/diversityreport; 2013 http://corporate.comcast.com/diversityreport; 2013 http://corporate.comcast.com/images/Comcast_NBCUniversal_CSR_2013.pdf; Comcast-TWC Public Interest Statement at 110-20.